

**MAY 17 2006****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****EVERARDO LOPEZ-LOPEZ,****Defendant - Appellant.****No. 05-50247****D.C. No. CR-04-00986-JSL****MEMORANDUM\***

**Appeal from the United States District Court  
for the Central District of California  
J. Spencer Letts, District Judge, Presiding**

**Argued and Submitted February 10, 2006  
Pasadena, California**

**Before: BEEZER, T.G. NELSON, and GOULD, Circuit Judges.**

**Lopez-Lopez challenges the sentence imposed by the district court for his conviction under 8 U.S.C. § 1326(a) and (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a) and we affirm.**

---

**\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.**

As counsel for Lopez-Lopez conceded, we must follow *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), unless and until the Supreme Court, itself, overrules it. *United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005); *see also Agostini v. Felton*, 521 U.S. 203, 237 (1997). The sentencing enhancement based upon Lopez-Lopez's prior conviction for residential burglary is constitutional.

The sentence is reasonable under *United States v. Booker*, 543 U.S. 220 (2005). *See United States v. Ameline*, 409 F.3d 1073, 1075, 1079 (9th Cir. 2005) (en banc). The sentencing judge considered the Sentencing Guidelines and the factors outlined in 18 U.S.C. § 3553(a) before imposing a sentence at the low end of the 70-87 months suggested by the advisory Guidelines. *See United States v. Rodriguez-Rodriguez*, 2006 WL 709133, at \*1 (9th Cir. Mar. 22, 2006).

The condition of supervised release challenged by Lopez-Lopez is ripe for review and does not violate the Fifth Amendment. *Rodriguez-Rodriguez*, 2006 WL 709133, at \*4.

**AFFIRMED.**